

CANER N. HALL, and )  
STELLA M. HALL, )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 04-008-SLR  
 )  
BROOKSIDE COMMUNITY INC., )  
and NANCY N. DOUGHTEN, )  
 )  
Defendants. )

The plaintiffs, pro se litigants, have filed this action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act ("ADA"). The plaintiffs have requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

When reviewing pauper application, the court must make two separate determinations. First, the court must determine whether the plaintiffs are eligible for pauper status pursuant to 28 U.S.C. § 1915. Based on the information provided in the plaintiffs' in forma pauperis affidavit, the court concludes that the plaintiffs have insufficient funds to pay the requisite filing fee. Accordingly, the court will grant the plaintiffs' request to proceed in forma pauperis. Second, the court must "screen" the complaint to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B).

The United States Supreme Court has held that 28 U.S.C. § 1915(e)(2)(B)'s term "frivolous" when applied to a complaint, "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation," such that a claim is frivolous within the meaning of § 1915(e)(2)(B) if it "lacks an arguable basis either in law or in fact," Neitzke v. Williams, 490 U.S. 319, 325 (1989).<sup>1</sup>

When reviewing complaints pursuant to 28 U.S.C. § 1915(e)(2)(B), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). Neal v. Pennsylvania Bd. of Prob. & Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997) (applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A).<sup>2</sup> Under this standard, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v.

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<sup>1</sup>Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act ("PLRA"). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolous under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 104-134, 110 Stat. 1321 (April 26, 1996).

<sup>2</sup>The bases for dismissal under § 1915A are virtually identical to § 1915(e)(2)(B). Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant immune from such relief. Therefore, the court applies the § 1915A standard of review when screening non-prisoner complaints pursuant to § 1915(e)(2)(B).

Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). As discussed below, the plaintiffs' Section 1983 claims against the defendants have no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

The plaintiffs allege that the defendants, the Brookside Homeowners Association ("the Association") and its attorney Nancy N. Doughten, have violated their civil rights and their rights under the ADA by trying to collect association fees from the plaintiffs in violation of the Association's by-laws. (D.I. 2) The plaintiffs further allege that although the defendants have not obtained a judgment against the plaintiffs from any court, they sent a police officer to the plaintiffs' home in an attempt to obtain the plaintiffs' property. (Id. at 1-3) The plaintiffs request that the court issue a temporary restraining order to prevent the defendants from trying to collect any further fees. (Id. at 9) The plaintiffs further request compensatory and punitive damages. (Id.)

To state a claim under 42 U.S.C. § 1983, a plaintiff must

allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986)).

To act under "color of state law" a defendant must be "clothed with the authority of state law." West, 487 U.S. at 49. The defendants are a private organization and the organization's attorney. As such, neither defendant is in any way "clothed with the authority of state law." Id. Therefore, the plaintiffs' § 1983 claim against the defendants has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e) (2) (B).

There are three ways in which the ADA may apply to a particular case: through the section addressing equal opportunity in employment for individuals with disabilities, through the prohibition against discrimination by public entities, and through the public accommodations requirements placed upon certain private entities. See 42 U.S.C. § 12111; 42 U.S.C. § 12131; and 42 U.S.C. § 12181.

It is clear from the plaintiffs' complaint that none of these sections of the ADA apply to this case. First, neither of the defendants are the plaintiffs' employers. See 42 U.S.C. §

12111(5)(B). Second, neither of the defendants are public entities as defined under 42 U.S.C. § 12131. Finally, the plaintiffs' home is not a "commercial facility" and the Association is not a qualified private entity as required by 42 U.S.C. § 12181. Therefore, the plaintiffs' ADA claim against the defendants has no arguable basis in law or in fact and shall be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

NOW THEREFORE, at Wilmington this 25th day of February, 2004, IT IS HEREBY ORDERED that:

1. The plaintiffs' request to proceed in forma pauperis is **GRANTED**.

2. The plaintiffs' complaint is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

3. The Clerk of the Court shall mail a copy of this memorandum order forthwith to the plaintiffs.

Sue L. Robinson  
United States District Judge